***HON'BLE SRI JUSTICE P.S. NARAYANA**

+WRIT PETITION NOs.5970 of 2004 and 18974 of 2006

%02-11-2006
WP.No.5970/2004
Between
#Khamruddin Khan. .. PETITIONER

versus

$The Mahbubnagar Municipal Council,
represented by its Chairman,
Mahabubnagar and another. .. RESPONDENTS

WP.No.18974/2006

Between
#P.Jaganmohan Rao. .. PETITIONER

versus

$The Chairman, Municipal Council,
Mahabubnagar Municipality at
Mahabubnagar and three others. .. RESPONDENTS

< GIST:

> HEAD NOTE:

WP No.5970/2004
!Counsel for Petitioner**: Sri P.Innayya Reddy**

^Counsel for Respondents**: Sri Polisetty Radhakrishna**

WP No.18974/2006
!Counsel for Petitioner**: Sri M.Damodar Reddy**

^Counsel for Respondents**: Sri Polisetty Radhakrishna**
G.P. for Municipal Administration and Urban Development.

Sri P.Innayya Reddy.

? Cases referred

THE HON'BLE SRI JUSTICE P.S.NARAYANA

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WRIT PETITION Nos.5970 of 2004 and 18974 of 2006

COMMON ORDER:

These two Writ Petitions are being disposed of finally at the request of the learned counsel representing the respective parties.

2. WVMP No.1833 of 2006 in Writ Petition No.5970 of 2004 is filed by to vacate the interim order made in WPMP No.7782 of 2004 in WP No.5970 of 2004, dated 9.4.2004.

3. Writ Petition No.5970 of 2004 is filed by the writ petitioner against the respondents, viz., The Mahaboobnagar Municipal Council

represented by its Chairman and the Municipal Commissioner, Mahaboobnagar Municipality praying for a Writ of Mandamus or any other appropriate writ, order or direction forbearing the respondents from giving effect to the proceedings in file No.1/1709/2002, dated 31.10.2002 issued by the respondent after declaring the same as illegal and contrary to law and direct the respondents not to interfere with the site in front of his house bearing No.1-3-111/3 situated at Saddalgundu, Mahaboobnagar town and pass such other suitable orders.

4. Writ Petition No.18974 of 2006 is filed by one P.Jagan Mohan Rao showing the writ petitioner in Writ Petition No.5970 of 2004 as 4th respondent and further impleading the Chairman, Municipal Council, Mahabubnagar Municipality, the Commissioner, Municipality Mahabubnagar, the Regional Joint Director, Municipal Administration, Government of A.P. Hyderabad as respondents 1 to 3 respectively, praying for issuance of a Writ of Mandamus declaring the action of 1st and 2nd respondents in not restraining the 4th respondent from proceeding with illegal construction without obtaining any permission from the Municipality towards southern side of house No.1-3-111/10, Rajendranagar, Saddalgundu, Mahaboobnagar, which is meant for 50' wide road in the master plan, though the construction permission of the 4th respondent was rejected by the Municipality, Mahaboobnagar twice, as illegal, unlawful, contrary to law and against the provisions of A.P. Municipalities Act, and consequently direct the 1st and 2nd respondents to forthwith prevent the 4th respondent from proceeding with the above illegal construction without permission and pass such other suitable orders.

5. Inasmuch as the subject matter being common, both these Writ Petitions are being disposed of by this common order.

6. Sri P.Innayya Reddy, learned counsel representing the writ

petitioner had taken this Court through the averments made in the affidavit filed in support of the Writ Petition and would submit that in the light of the findings already recorded in OS No.135 of 1983 on the file of District Munsif, Mahaboobnagar, the dispute now being put forth by the Municipality is totally unsustainable and hence the relief prayed for in the present Writ Petition to be granted. The learned counsel also had taken this Court through the relevant findings recorded in the prior judicial proceedings.

7. Sri Polisetty Radhakrishna, learned Standing Counsel representing the Municipality, however, would submit that the suit is for mere perpetual injunction and the Municipality is not interfering with the possession of the writ petitioner in Writ Petition No.5970 of 2004, but for approval of plan, the master plan is coming in the way and hence the findings recorded either in OS No.135 of 1983 or AS No.34 of 1983 may not help the writ petitioner.

8. Sri Damodar Reddy, learned counsel representing the writ petitioner in Writ Petition No.18974 of 2004 would contend that the 4th respondent in the said Writ Petition, Kamruddin Khan, who is the writ petitioner in WP No.5970 of 2004, is trying to proceed with illegal constructions without obtaining any permission whatsoever from the Municipality and this is not permissible, and several factual details narrated in this regard in the affidavit had been well explained.

9. The specific case of Kamruddin Khan, the writ petitioner in WP No.5970 of 2004 and 4th respondent in WP No.18974 of 2004 is that his father purchased a plot of an extent of 848 square yards in Suddalagundu locality at Mahaboobnagar town from the original owner on 5.12.1948 and since the date of purchase, his father was in continuous possession and enjoyment of the said property. He applied to the Mahaboobnagar Municipality for grant of permission for construction of a house on the said plot and after completing with the

required formalities, the Municipality granted permission on 11.3.1974 and approved the plan submitted along with the petition. It is also stated that as per the permission granted by the Municipality, the father of the petitioner constructed a house bearing No.1-3-111/3 on the said plot leaving an area of 190 square yards in front of the house and also 3' land on the western side of the house for passage. The said plot of 190 square yards in front of the house of the petitioner has been in his exclusive possession and enjoyment. The petitioner's father submitted a plan to the Municipality on 1.9.1980 for granting permission for construction of two rooms and a compound wall in the open area of 190 square yards. As the Municipality did not grant permission, a legal notice was issued on 1.8.1981 and instead of granting permission, the employees of the Municipality came to the plot on 21.1.1983 and tried to occupy the land alleging that it formed part of proposed expansion of the road and at that stage the father of the petitioner was constrained to file a suit against the Municipality for perpetual injunction in OS No.135 of 1983 on the file of District Munsif, Mahaboobnagar and the said suit was decreed in his favour on 4.12.1992 restraining the Municipality from interfering with his peaceful possession and enjoyment of the suit plot. It is also stated that aggrieved by the said decree and judgment in OS No.135 of 1983, the respondent preferred appeal in AS No.34 of 1993 before the District Judge at Mahaboobnagar and the said appeal was dismissed on 23.10.1997 confirming the decree of the trial Court, but in the said appeal the District Judge had clarified that as no relief was sought regarding the grant of permission for the proposed construction, it was open to the Municipality to grant or reject the permission as per the Rules. It is also further stated that as the Commissioner, Mahaboobnagar Municipality did not take any action on the application submitted on 1.9.1980 for granting permission, the petitioner filed applications on 16.1.1998 and 20.4.1998 requesting the Municipality

to grant permission for construction of the compound wall and two rooms. The Commissioner, Mahaboobnagar Municipality thereafter passed adverse order rejecting the petitioner's application on 12.5.1998 in file No.G/BA.1586/98 stating that the proposed construction is affecting 50' road mentioned in the master plan approved in the year 1979. Aggrieved by the said order, the petitioner filed an appeal under Section 345(1)(e) of A.P. Municipalities Act, 1965, before the respondent on 17.9.1998 vide in Ward No.5080/98 challenging the order passed by the Commissioner, Mahaboobnagar Municipality. Despite as many as four reminders, the last one being dated 17.5.2001 were sent, no action was taken on his appeal filed on 17.9.1998, and therefore the petitioner was constrained to file Writ Petition No.19813 of 2001 seeking issuance of a Writ of Mandamus directing the respondent to dispose of the appeal filed which has been pending disposal before him for the last three years and this Court by order dated 24.9.2001 directed the respondent to dispose of the appeal filed by the petitioner within three months from the date of the receipt of the order. Since no action was taken, a Contempt Case No.1066 of 2002 was filed and after filing of the said contempt case, the impugned order dated 31.10.2002 was passed rejecting the appeal, as a result of which the contempt case was closed. It is also further stated that the impugned order of rejection of permission is vitiated as it was based on the solitary ground that the site of the proposed construction falls in the master plan road 60' (50' as per the order of the Commissioner and the record) as per the approved plan of 1979 of the Director of Town Planning. This ground is not available to the respondent as it is wholly and directly conflict with the concurrent finding of both the trial Court as well as the appellate Court. It is also further stated that the case of the petitioner in OS.No.135 of 1983 was that the disputed site of 190 square yards is part of 848 square yards

purchased by him in the year 1948 and therefore he was entitled for perpetual injunction as he is the exclusive owner and possessor of the petition site. It is also further pleaded that the plea of the respondent in the written statement that the suit site is covering the existing road and also partly covering 50' road and to substantiate its case, DW.1, the Town Planning Supervisor, and DW.2, Advocate-Commissioner appointed by the Court, were examined and Exs.B1 to B3, i.e., existing plan showing physical features and the master plan were marked. As this matter has been pending since 1980, if the petition site was being affected by the proposed expansion of the road, action ought to have been initiated under the Land Acquisition Act to acquire that site or part of it, but that was not done. It is further stated that the only question that fell for consideration and decided by the Courts was whether the petition site is covered for affected by 50' road or not and that having been concurrently held against the respondent, the same decided fact based on oral and documentary evidence cannot be the basis again for refusing permission. It is also further stated that while exercising power under Section 345(1)©, the respondent acts as quasi judicial authority and his order should be informed by reason and free from arbitrariness and that it abdicated its function and acted in a highly partisan manner with ulterior motive. It is also further stated that the respondents had been putting the petitioner to a lot of inconvenience at every stage from the date of his application dated 1.9.1980 seeking permission for construction of two rooms and a compound wall and the Municipality finally rejected it on 31.10.2002 after a period of 22 years. During this period the petitioner issued a legal notice on 31.8.1981 and when they illegally tried to occupy the site on 22.9.1983, his father was constrained to file suit in OS No.135 of 1983, which was disposed of on 4.12.1992, against which the respondent filed appeal in AS No.34 of 1993 and the same was dismissed on 23.10.1997, and after dismissal of the appeal, no action was taken despite four reminders

and ultimately the petitioner had filed W.P.No.19813 of 2001 seeking directions to the respondent to dispose of the appeal within three months, and when that was not complied with, a contempt case was filed and after receipt of the notice therein, the present impugned order was passed. Subsequent to the proceedings of the respondent rejecting the appeal of the petitioner, a pipeline was laid by the Municipality and at that stage the petitioner was constrained to file application in EP No.99 of 1997 and eventually the respondent got the said pipeline removed under written intimation to the petitioner dated 13.11.2003. It is stated that the petitioner filed another application dated 13.1.2004 seeking permission for construction. In such circumstances, the relief was prayed for in Writ Petition No.5970 of 2004.

10. In the Vacate Application filed by the Mahaboobnagar Municipality, several allegations were denied. It was averred in paragraph 4 of the counter affidavit that the 1st respondent is not aware about the purchase of the land by the petitioner's father. However, the petitioner was never in possession of the land in question. It is stated that though the land in dispute with surrounding lands were agricultural lands, they were converted into residential plots without there being any approved lay out from the competent authority. As per the master plan the site in dispute was shown as 50' road. The agricultural land owner sold the plots to various persons without there being any approved lay outs. It is pertinent to mention that one of the purchasers i.e., K.Srinivas Reddy purchased the plot by way of a registered sale deed dated 29.3.1985. The plan showing the registered plot at Saddalagundu clearly establishes as per the registered document that there is a 50' wide road. Basing on the same, the Municipality issued permission for construction of residential building by proceedings dated 29.8.1986. One Smt.P.Chandrakala

purchased a house bearing No.1-3-111/8 in the said illegal lay out by way of registered sale deed dated 23.5.1981. In the said registered document the land in question was shown as 45' road. In view of the above, there is a 50' road. It is also stated that the contention of the petitioner that the respondent-Municipality issued permission for construction of a house by proceedings dated 11.3.1974 is absolutely false and incorrect. It is also further stated that it is false to say that the petitioner left the land in question admeasuring 190 square yards as open plot and was in possession. This land is earmarked for road in master plan vide GO Ms.No.982, MA., dated 24.11.1978 and the road is being used by one and all including the petitioner. In view of this, the application of the petitioner dated 1.9.1980 was rejected. As per the existing building rules, master plan etc., the petitioner is not entitled for construction over the land in question as the said piece of land is meant for road. OS No.135 of 1983 was filed by the father of the petitioner for perpetual injunction and the said suit was decreed. This respondent never interfered with the possession of the petitioner. It is pertinent to mention that the appeal AS No.34 of 1993 filed by the Municipality was dismissed. Specific stand was taken that as long as the master plan approved by the Director of Town and Country Planning, A.P. Hyderabad is there, this respondent has no power to grant any building permission over the land in question. As stated supra, as per the registered documents mentioned above, there is an existing 50' wide road since quite a long time and the petitioner cannot claim road portion. It is also stated that the petitioner cannot take shelter under the decree in the suit since there is no interference by this respondent and the decree does not direct this respondent to accord permission for any constructions. Mere injunction cannot over ride the statutory rules and the master plan etc., and the rejection order for carrying out any construction over the land in question is a speaking one and quite legal and it is not disobeying the decree

passed by the civil Court. A further stand was taken that the petitioner obtained injunction decree against this respondent over the piece of land which is being used by one and all including the petitioner as a road and the same was under the master plan approved in the year 1978. Injunction cannot restrain this respondent from exercising its powers under the Municipalities Act, master plan etc., and hence the impugned rejection order is well within the powers of this respondent and in accordance with law. Several other similar allegations were made in the counter affidavit.

11. In the affidavit filed in support of the Writ Petition No.18974 of 2006, several factual details had been narrated and the specific stand taken by the writ petitioner is that he purchased the property in 1988 by way of a registered sale deed in the name of his wife and towards southern side of the house, there is a 50' wide road and even the said fact was mentioned in the registered sale deed. Several other factual details had been narrated, which are virtually of the same nature which in fact the Municipality had taken in the counter affidavit in Writ Petition No.5970 of 2004.

12. In substance, the objection of this neighbour also appears to be the same and his main grievance is that without obtaining approval from the Municipality, the 4th respondent in Writ Petition No.18974 of 2004, who is the writ petitioner in WP No.5970 of 2004, is further proceeding with the construction.

13. It is made clear at this stage itself that unless and until the writ petitioner in WP No.5970 of 2004 obtains permission from the Municipality in question, he cannot further proceed with the construction and any such constructions, even if proceeded with, would be unauthorized or unlawful constructions. However, Sri Innayya Reddy states that unless and until his application is considered and disposed of in accordance with law as prayed for, the

writ petitioner in WP No.5970 of 2004 is not interested in proceeding with any constructions whatsoever in this regard. The same is hereby recorded.

14. As far as the relief prayed for in WP No.5970 of 2004 is concerned, on a careful perusal of the findings which had been recorded in OS No.135 of 1983, which in a way had attained finality since the appeal preferred as against the said judgment and decree in AS No.34 of 1993 on the file of District Judge, Mahaboobnagar also was dismissed, though it is a suit for permanent injunction, the same question had been agitated and the same was decided. Before this Court, the learned Standing Counsel representing the Municipality in question made elaborate submissions that no doubt in a suit for injunction since a restraint order was made, the Municipality is not interfering with the possession of the writ petitioner, but as far as granting of approval or rejecting thereof are concerned, they stand on a different footing altogether. This Court is not inclined to accept the said contention for the reason that may be the relief prayed for in the suit is only perpetual injunction, but when the self-same question had been canvassed and decided by a competent civil Court and the matter was carried by way of appeal and the same also was dismissed, the Municipality now cannot turn round and say that the suit is only for a mere perpetual injunction and hence on such a ground, which in a way had been negatived by a competent civil Court, again an order of rejection can be made. In the backdrop of the findings which had been recorded by the competent civil Court, this Court is of the considered opinion that inasmuch as the same had attained finality, the Mahaboobnagar Municipality is bound by such findings and hence the writ petitioner is justified in requesting for the disposal of his application in accordance with law with reference to the building bye-laws and without considering the location of the petitioner's site whether it is part of the road or master plan road especially in the light

of the findings which had been recorded by the competent civil Court referred to supra. In the light of the same, the writ petition filed by the neighbour viz., WP No.18974 of 2004 is disposed of observing that the writ petitioner in WP No.5970 of 2004 i.e., 4th respondent in WP No.18974 of 2004, not to proceed with any construction unless and until the writ petitioner obtains the valid and proper approval from the Municipality in question. However, as far as WP No.5970 of 2004 is concerned, the writ petitioner is bound to succeed since the Mahaboobnagar Municipality is bound to dispose of the applications of the petitioner praying for granting of the building permission only taking into consideration the Building Bye-Laws and in accordance with law and definitely not on the ground that the property in question is located as part of the road or the master plan road. This Court is expressing this view in the light of the findings already recorded by a competent civil Court.

15. Accordingly WP No.5970 of 2004, in the light of the directions issued supra, is hereby allowed to the extent indicated above. It is needless to say that it appears to be a long drawn litigation, the Mahaboobnagar Municipality to dispose of the applications made by the writ petitioner in accordance with law as expeditiously as possible at any rate within a period of four (04) weeks from the date of receipt of a copy of this order. No costs.

16. The writ petition filed by the neighbour viz., WP No.18974 of 2006 is disposed of. No costs.

02.11.2006

SSR

Issue order copy tomorrow.

(BO)

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